

# SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND ALEKO PRODUCTS

## 1. RECITALS

### 1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Aleko Products (“Aleko”). APS&EE and Aleko shall hereinafter collectively be referred to as the “Parties”.

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 APS&EE alleges that Aleko is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

### 1.2 Allegations

1.2.1 APS&EE alleges that Aleko sold the Aleko mesh wire cloth, including WM42X8M1G20; WM16G12X1M75FX48I; WM24X150M2G20; WM24X25M1G16; WM24X25M1X2G16; WM24X50M1/2G19; WM24X5M1/4G23; WM30X10M1/2X1G16; WM36X100M1/2G19; WM36X50M1/2G19; WM36X50M2G20; WM36X8M2G20; WM36X8M2G21; WM40X40M1/4G23; WM40X50M1G16; WM48X100M1/2G19; WM48X100M1/4G23; WM48X150M2G20; WM48X50M1/4G23; WM48X50M2G20; WM60X100M2X4G14; WM72X150M1G20; WM72X150M2G20; and WM36X75M2X1G16 (hereinafter the “Products”) in the State of California causing users in California to be exposed to unsafe levels of Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is

potentially subject to Proposition 65 warning requirements because it is listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

**1.2.2** On April 3, 2018, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”) to Aleko, Alekogates.com, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

### **1.3 No Admissions**

Aleko denies all allegations in APS&EE’s Notice and maintains that the Products have been, and are, in compliance with all laws, and that Aleko has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Aleko but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Effective Date**

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party’s counsel.

## **2. INJUNCTIVE RELIEF AND REFORMULATION**

### **2.1 Reformulation**

As of the Effective Date, Aleko shall not distribute, sell or offer for sale the Products in California unless (a) the galvanizing solution in which the Products are submerged contains no more than 100 parts per million (0.01%) of Lead (“Reformulated Products”), or (b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

### **2.2 Clear And Reasonable Warnings**

**2.2.1** For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Aleko shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018) and use a warning with the capitalized and emboldened wording substantially similar to the following:

**WARNING:** This product can expose you to Lead which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

If Aleko has reason to believe the Products may expose consumers to additional chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals, including Lead, which are” in the warning statement. The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

**2.2.2** Consistent with 27 Cal. Code Regs. § 25601, et seq. operative August 30, 2018, the Products shall carry said warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

**2.2.3** A Product that is sold by Aleko to California purchasers via the internet shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. For Products that Aleko provides for a downstream retailer to sell to California consumers on the internet, Aleko shall request that the retailer provide the warning message for the Product on its website before the purchaser completes his or her purchase of the Product. Aleko shall bear no responsibility or liability under this Agreement for whether the downstream retailer actually provides the requested warning for the Product on its website.

### **3. PAYMENTS**

#### **3.1 Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Agreement, Aleko shall pay a total civil penalty of one thousand dollars (\$1,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$250.00) for APS&EE.

Aleko shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$750.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$250.00 which Law Offices of Lucas T. Novak shall subsequently disburse to APS&EE. Aleko shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

Plaintiff agrees to provide Aleko with IRS W9 forms for its counsel and OEHHA, to enable Aleko to process payments due per the terms of this Agreement. The Parties agree that payments under this Agreement will not become due until such IRS W9 forms are provided.

#### **3.2 Reimbursement Of APS&EE’s Fees And Costs**

Aleko shall reimburse APS&EE’s experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, Aleko shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of thirteen thousand two hundred and fifty dollars (\$13,250.00). Aleko shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.

LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

#### **4. RELEASES**

##### **4.1 APS&EE's Release Of Aleko**

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Aleko, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, including: Alekogates.com; VBN Sales LLC; AS Trading LLC; Barcelo Relax Inc dba Ireko; Bibione LLC dba Goliath; Elena Alexia LLC; Marina Alexia LLC dba Aleko; Alex Computer Services LLC; Elena Maliugina; Marina Maliugina; Aleko Store, Marina Maliugina; Riviera Maya Store, Elena Maliugina, Individual; Honolulu Store, Marina Maliugina, Individual; San Diego Store, Elena Maliugina, Individual; Kent Group LLC; Koral Group LLC; Vladimir Danilyuk, Individual; Covington 5 Star Online Store, Oleksiy Olifirenko, Individual; and Alex Computer Services, Oleksiy Olifirenko, Individual, as well as their downstream distributors, retailers, and customers (collectively "Releasees"), from any alleged Proposition 65 violation claims asserted in APS&EE's Notice regarding failure to warn about exposure to Lead in the Products sold or distributed by Aleko before and up to the Effective Date.

##### **4.2 Aleko's Release Of APS&EE**

Aleko, and on behalf of the Releasees, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Aleko in this matter. If any Releasee should institute any such action, then APS&EE's release of said Releasee in this Agreement shall be rendered void and unenforceable.

##### **4.3 Waiver Of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

**5. SEVERABILITY**

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California.

**7. NOTICE**

All correspondence and Notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO ALEKO: Michael J. Gleason, Esq. Hahn Loeser & Parks LLP One America Plaza 600 W Broadway, Suite 1500	TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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San Diego, CA 92101	
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**8. COUNTERPARTS**

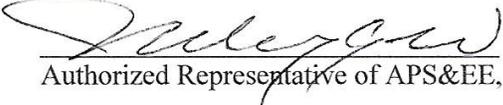
This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

**9. AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

**AGREED TO:**

Date: 6/19/18

By:   
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: 6/18/2018

By: Alex Malugin  
Authorized Representative of Aleko Products